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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1750 OF 2007

Mr. Surupsingh Hrya Naik)
Age 60 years, Mumbai Indian)
Inhabitant,residing at Nawagaon)
Post Nawagaon, Tal. Nawapur,)
Dist. Nandurbar.)..PETITIONER

Versus

1.State of Maharashtra)
(through Additional Secretary)
General Administration Deptt.)
having office at Mantralaya)
Mumbai-400 032.)
2.State Information Commission)
Maharashtra, an Authority)
Established under the)
Provisions of the Right)
Information Act, having office)
at 13th Floor, New Administ-)
-rative Building, Opp.)
Mantralaya, Madam Cama Road,)
Mumbai-400 032.)
3.The Appellate Officer, Sir)
J.J. Hospital, Mumbai.)

4.The Public Information)
Officer, Sir J.J. Hospital,)
Byculla, Mumbai.)
5.Shailesh Gandhi, Age Adult)
Mumbai Indian Inhabitant)
residing at B/2,Gokul Apartment)
Podar Road, Santacruz (West),)
Mumbai-400 064.)..RESPONDENTS

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. S.S. Kanetkar for petitioner.
Mr. A.A. Kumbakoni, Associate Advocate General with Mr. V.P. Malvankar, AGP for the Respondent Nos. 1 to 4.
Respondent No.5 in person.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 23RD MARCH, 2007.

JUDGMENT (PER F.I.REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioner is presently a Member of the Legislative Assembly of the State of Maharashtra. Contempt Proceedings had been initiated against the petitioner by the Honourable Supreme Court, which imposed on him imprisonment of one month, by judgment dated 10th May, 2006. The petitioner on 12th May, 2006 surrendered to the Police Authorities in Mumbai and was taken in custody. On 14th

May, 2006 Petitioner was shifted to Sir J.J. Hospital, Mumbai on account of suspected heart problems as well as low sugar and blood pressure. According to the petitioner he underwent medical treatment at Sir J.J. Hospital, Mumbai for the period of 21 days and was discharged on 5th June, 2006. Petitioner served the remaining tenure of imprisonment till 11th June, 2006 in jail on which day he was released from custody on completing the period of sentence. The petitioner contends that he is suffering from various diseases such as diabetes, heart problem and also blood pressure from 1998-99 onwards and has been admitted to hospital on various occasions on account of his health problems.

3. The Respondent No.5 is a private citizen who by an application dated May, 27, 2006 sought from the Respondent No.4, the Public Information Officer of Sir J.J. Hospital, Byculla, Mumbai, the medical reports of the petitioner. In his application it was set out that it was in public interest to know why a convict is allowed to stay in an air conditioned comfort of the hospital and there had been intensive questioning about this aspect in the media and the peoples mind. There is, therefore, a legitimate doubt about the true reasons for a convict being accommodated in air conditioned comfort of the hospital, thereby ensuring that the convict escapes the punishment imposed on him and also denies a scarce facility to the needy. The information, sought was set out therein. On 20th June, 2006 the Public Information Officer addressed a letter to the General

Administration Department, State of Maharashtra, seeking information of the legal aspects regarding the application made by respondent No.5 under the provisions of the Right to Information Act. On 4th July, 2006 in response to the letter the respondent No.4 clarified that the Right to Information Act is a Central Act and any clarification, assistance or doubt as to interpretation of the provisions of the Act will have to be sought from the Central Government. On 3rd July, 2006 the Respondent No.4 addressed a letter to the petitioner, intimating him that information about the petitioner's hospitalisation between 15th May, 2006 to 5th June, 2006 had been sought by the Respondent No.5. The petitioner was called upon to give his say as to whether the information should be given. There is nothing on record to indicate whether the petitioner replied to the said letter.

4. As the respondent No.4 did not furnish the necessary information, the respondent No.5, preferred an Appeal on 21st June, 2006 before the Respondent No.3. On 3rd July, 2006 the Respondent No.3 rejected the application on the ground that the same was not signed by the respondent No.5. Respondent No.5 preferred another Appeal to respondent No.3 under Section 19(1) of the Act, which was rejected on 25th July, 2006. Aggrieved by the said order the respondent No.5 preferred a Second Appeal before the Respondent No.2. The Respondent No.2 allowed the Appeal and for reasons disclosed in the order directed the respondent No.4 to give information to the respondent No.5. The petitioner on 5th

March, 2007 submitted a letter to the Dean, Sir J.J. Hospital with a request that information relating to the petitioner should not be disclosed to anyone. On 8th March, 2007 the petitioner filed an application requesting for a copy of the application made by the respondent No.5 and the order passed by the respondent No.2 from Respondent No.4. It is the petitioner's case that on 8th March, 2007 he made a representation to the Respondent No.2 as well as Respondent No.3 stating that the disclosure of information would amount to invading the privacy of the petitioner and, therefore, he proposed to approach the higher authorities to ventilate his grievance and as such the copies of the documents sought for by him be made available. The respondent No.3 informed the petitioner by communication of 9th March, 2007 that the order passed by the respondent No.2 is not available. On 12th March, 2007 the petitioner through his Advocate once again sought for copy of the order and also prayed that the order be not executed. The petitioner on receiving a copy of the order preferred this petition.

5. At the hearing of this petition, the impugned order is challenged on various counts. We may summarise the grounds raised before us as under:-

(a) The information sought for by the Respondent No.5, it is submitted is private and as such could not have been disclosed to Respondent No.5 without the consent of the petitioner.

(b) It is next submitted that considering Section 19(4) of the Right to Information Act before passing an order against the petitioner, the Respondent No.2 was bound to give notice to the petitioner herein. Such notice has not been given and consequently the order passed by the respondent No.3 is without jurisdiction and consequently is liable to be quashed and set aside.

6. We have heard the learned Counsel for the petitioner, the learned Associate Advocate General and the Respondent No.5, who appears in person.

7. Before considering the arguments, it would be appropriate if we consider some of the provisions of the Right to Information Act.

. Section Section 2(f) which defines "information", reads as under:-

"2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

Section 2(j) which defines "right to information" reads as under:-

> "2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--
>
> (i) inspection of work, documents, records;
>
> (ii) taking notes, extracts or certified copies of documents or records;
>
> (iii) taking certified samples of material;
>
> (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printout where such information is stored in a computer or in any other device."

Section 2(n) defines "third party" which reads as under:-

> "2(n) "third party" means a person other than the citizen making a request for information and includes a public authority."

Section 3 of the Act reads as under:-

"3.Right to information

Subject to the provisions of this Act, all citizens shall have the right to information."

Section 4 deals with obligations of public authorities and the maintenance of records. A person who desires to obtain information can do so considering Section 6, by making a request in writing in the language set out therein.

. Section 6(2) is material and reads as under:-

"6(2) An applicant making request for information shall not be required to give any reasons for requesting the information or any other personal details except those that may be necessary for contacting him."

. Under Section 7, the concerned Public Information Officer as expeditiously as possible and in any case within 30 days of the receipt of the request either provide the information or reject the request for the reasons specified in Sections 8 and 9. We are really not concerned with Section 9 as it pertains to information involving infringement of copyright subsisting in a person other than the State. We then have for our consideration the relevant portion of Section 8, which reads as under:-

8.(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

.....

.....

.....

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information

PROVIDED that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

. Section 11 deals with third party information and sets out, that where an Appropriate Information Officer intends to disclose any information or record or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the concerned Public

Information Officer shall give a written notice to such third party of the request, informing that he intends to disclose the information on record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in mind while taking a decision about disclosure of information.

. Under Section 18 certain powers have been conferred on the appropriate Information Commission to receive and inquire into a complaint from any person. In doing so certain powers as vested in the Civil Court while trying a suit have been conferred on that authority. The next relevant provision is Section 19 which we shall reproduce to the extent necessary, which read as under:-

> "19. Appeal.
>
> (1) Any person, who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may, within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer, as the

case may be, in each public authority.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3).....

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request."

. A consideration of these provisions would indicate that ordinarily the information sought for by a person like Respondent No.5, must be made available and such person need

not give reasons for the information he seeks. Another important aspect of the matter is that in respect of information relating to a third party the concerned Public Information Officer must give notice to the third party and if such third party makes submissions then to consider the said submissions.

8. On behalf of the petitioner, learned Counsel submits that the information sought for by Respondent No.5 of the petitioner's medical records is confidential, considering the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 framed under the provisions of the Indian Medical Council Act, 1956, which hereinafter are referred to as the Regulations. Regulation 2.2 which is relevant, reads as under:-

> **"2.2. Patience, Delicacy and Secrecy.** Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the law of the State. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidence as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act

as he would wish another to act toward one of his own family in like circumstances."

. It appears from this Regulation, that the information as sought, should not be revealed unless the revelation is required by the law of the State.

. The next relevant Regulation is Regulation 7.14 which reads as under:-

"7.14. The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his/her profession except:

(i) in a court of law under orders of the Presiding Judge;

(ii) in circumstances where there is a serious and identified risk to a specific person and/or community; and

(iii) notifiable diseases.

In case of communicable/notifiable diseases, concerned public health authorities should be informed immediately."

From this Regulation it follows that the Medical Practitioner shall not disclose the secrets of his patient

that has been learnt in the exercise of his profession except in a Court of law and under orders of the Presiding Judge. The expression "Court of Law" and Presiding Judge have not been defined. Considering normal interpretive process, the expression "Court of Law" and orders of Presiding Judge should include both Courts and Tribunals.

9. Reliance was placed on the Declaration of Geneva, adopted by the 2nd General Assembly of the World Medical Association, Geneva, Switzerland, September, 1948 and as amended thereafter. Under this convention there is a provision pertaining to right to confidentiality of information about the patient’s health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind with the exception, that descendants may have a right of access to information that would inform them of their health risk. Otherwise the confidential information can only be disclosed if the patient gives explicit consent or as expressly provided in the law. Clause 10 refers to right to dignity. Even if India is a signatory to the said declaration, Parliament has not enacted any law making the declaration a part of the Municipal Law. It is well settled that in the absence of Parliament enacting any law adopting the convention, the convention by itself cannot be enforced. It is only in the area of Private International law, in Jurisdictions like Admirality/Maritime, that international conventions are enforced based on customary usage and practice. That however, will be subject to the Municipal Law if there be

any. In the absence of the convention being recognised by law duly enacted, the provisions of the convention cannot really be enforced. The only other way the convention can be enforced is, if it can be read into Article 21 of the Constitution. See **Unnikrishnan J.P. vs. State of A.P. AIR 1993 SC 2178.**

10. The q**uestion that we are really called upon to** answer is the right of an individual, to keep certain matters confidential on the one hand and the right of the public to be informed on the other, considering the provisions of the Right to Information Act, 2005.

. In the instant case on facts we are dealing with the issue of to person convicted for contempt of Court. Do such a person during the period of incarceration, claim privilege or confidentially in respect of the medical records maintained by a public authority. The contention of the respondent No.5 is that the larger public interest requires that this information be disclosed, as persons in high office or high positions or the like, in order to avoid serving their term in Jail/prison or orders of detention or remand to police custody or judicial remand with the connivance of officials get themselves admitted into hospitals. The public, therefore, it is submitted, has a right to know, as to whether such a person was genuinely admitted or admitted to avoid punishment/custody and thus defeat judicial orders. The public’s right in such case, it is submitted, must prevail over the private interest of such

third person. The Court must bear in mind the object of the Right to Information Act which is to make the public authorities accountable and their actions open. The contention that the information may be misused is of no consequence, as Parliament wherever it has chosen to deny such information has so specifically provided. As an illustration our attention is invited to Section 8 which provides for exemption from disclosure of information.

11. In support of the contention, that the information is private and confidential and ought not to be disclosed, the petitioner has invited our attention to various judgments. We may firstly refer to the judgment of the Supreme Court in **Peoples Union For Civil Liberties vs. Union of India, 1997 (1) SCC 301.** The issue arose in a matter of telephone tapping. The Supreme Court noting its judgment in **Kharak Singh vs. State of U.P. AIR, 1963 S.C. 1295,** held that "right" includes "right to privacy" as a part of the right to life under Article 21. Noticing various other judgments, including in R. Rajagopal v. State of T.N., (1994) 6 SCC 632 the Court arrived at a conclusion that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens under Article 21. It is a "right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters." The Court then observed as under:-

"18. THE right to privacy - by itself - has not been

identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modem man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

12. Reliance was placed in **Mr. "X", Appellant v. Hospital "Z", Respondent, AIR 1999 S.C. 495.** The issue involved therein is disclosure of information of a patient affected by HIV. The person whose information was disclosed, sought an action in damages, by moving the National Consumer Disputes Redressal Commission which was rejected and hence the Appeal to the Supreme Court. In considering the duty to maintain confidentially, the Court traced its history to the Hippocratic Oath. The Court then

noted that in India it is the Indian Medical Council Act which controls medical practitioners and the power to make regulations. The Court observed that in doctor-patient relationship, the most important aspect is the doctor's duty of maintaining secrecy and the doctor cannot disclose to a person any information regarding his patient, which he has gathered in the course of treatment nor can the doctor disclose to anyone else the mode of treatment or the advice given by him to the patient. The Code of Medical Ethics, carves out an exception to the Rule of confidentiality and permits the disclosure in the circumstances enumerated in the judgment under which **public interest would override the duty of confidentiality particularly where there is an immediate or future health risk to others.** Dealing with the aspect of privacy, the Court observed as under:-

> "27. Disclosure of even true private facts has the tendency to disturb a person's tranquillity. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others."

13. The right to privacy now forms a part of right to life. It would, therefore, be apparent on a reading of Regulation 2.2 and 7.14 framed under the Medical Council of India Act that information about a patient in respect of his ailment normally cannot be disclosed because of the Regulations, which is subordinate legislation except where the Regulation provides for. The Right to Information Act, is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflict between the two. The exception from disclosure of information as contained in Section 8 has some important aspects. Section 8(1)(j) provides that personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual shall not be disclosed unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied, that the larger public interest justifies the disclosure of such information. In other words, if the information be personal or would amount to invasion of privacy of the individual, what the concerned Public Information Officer has to satisfy is whether the larger public interest justifies the disclosure. In our opinion, the Regulations framed under the Indian Medical Council Act, will have to be read with Section 8(1)(J) of the Right to Information Act. So read it is within the competence of the concerned Public Information Officer to disclose the information in larger

public interest or where Parliament or State Legislature could not be denied the information.

14. The next aspect of the matter is whether the proviso after Section 8(1)(j) applies in its entirety to Section 8(1)(a) to 8(1) or only to Section 8(1)(j). Does, therefore, the proviso apply to Section 8(1). Before answering the issue we may refer to the judgment of a learned single Judge of this Court in the case of **Panaji Municipal Council vs. Devidas J.S. Kakodkar & Anr., 2001 (Supp.2) Bom. C.R.544,** to which our attention was invited by the learned Counsel for the petitioner. In that case what was in issue was the proviso to Section 5 of the Goa Rights of Information Act, 1997. The proviso there was placed after the various provisions. The learned Single Judge while construing the effect of the proviso, restricted it only to Sub-Sections 5(e) and not to Section 5(a),(b),(c) and (d) as otherwise according to the learned Judge the Section was liable to be struck down as being violative of Article 21 of the Constitution of India. We do not propose to go into the correctness of the said judgment. Suffice it to say that in the Central Act, the proviso has been placed after Section 8(1)(j) and in that context it would have to be so interpreted. So reading the proviso applies only to Section 8 (1) (j) and not to the other sub-sections of that Section.

15. The question then is what is the true import of the proviso, which sets out that the information which cannot be

denied to Parliament or a State Legislature shall not be denied to any person. Are the medical records maintained of a patient in a public hospital covered by the provisions of the Act. Can this information be withheld to either Parliament or State Legislature as the case may be on the ground that such information is confidential. To our mind generally such information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of the information makes out a case that such information is not available to Parliament or the State Legislation under the Act. By its very constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to Parliament or State Legislature by any public authority. As the preamble notes, the Act is to provide for setting out a practical regime of right to information for citizens, to secure access to information under the control of public authorities as also to promote transparency and accountability in the working of every public authority. These objects of the legislature are to make our society more open and public authorities more accountable. Normally, therefore, all such information must be made readily available to a citizen subject to right of privacy and that information having no relationship to any public authority or entity. In the instant case the respondent No.2 while granting the application of respondent No.5, has given as reasons larger public interest and as that the information could not be with-held from Parliament or State Legislature. The learned Associate Advocate General informed us that the State Assembly has not framed

any Rules in the matter of receiving information.

. The test always in such matter is between private rights of a citizen and the right of third person to be informed. The third person need not give any reason for his information. Considering that, we must hold that the object of the Act, leans in favour of making available the records in the custody or control of the public authorities.

16. In this case we are dealing with a case of a person who was sentenced for contempt of the Court at that time in respect of which the information is sought. In **D.Bhuvan Mohan Patnaik & Ors. vs. State of A.P. & Ors., AIR 1974 SC 2092** the Supreme Court reiterated the rights of a convict and was pleased to hold that:-

> "Convicts are not by mere reason of the conviction, denuded of all the fundamental rights which they otherwise posses.":

The Court also held that the conviction may result in deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. But the Constitution guarantees other freedoms for the exercise of which incarceration can be no impediment. The convict is entitled to the precious right guaranteed by Article 21 of the Constitution of India. Therefore, under our constitution the right to personal liberty and some of the other fundamental freedoms are not

totally denied to a convict during the period of incarceration.

16. In the instant case according to the respondent No.5 the petitioner though a convict was admitted in the general ward of the hospital and was put up in an air conditioned room and not in the Prisoners Ward. The right to receive medical treatment as a part of right to life, could not have been denied to the petitioner. The reasons for the information sought by the respondent No.5 need not be gone into, as the Act itself under Section 6(2) does not require the applicant to give any reasons for requesting the information. The contention on behalf of the petitioners, therefore, that information given may be misused really in our opinion would not arise considering the object behind Section 6(2) of the Act. The provisions of the Right to Information Act, will override the provisions of the Regulations framed under the Indian Medical Council Act to the extent they are inconsistent. The exercise of power under the Act in respect of private information is subject only to Section 8(1)(j) and the proviso.

17. The law as discussed may now be set out. The confidentiality required to be maintained of the medical records of a patient including a convict considering the Regulations framed by the Medical Council of India cannot override the provisions of the Right to Information Act. If there be inconsistency between the Regulations and the Right to Information Act, the provisions of the Act would prevail

over the Regulations and the information will have to be made available in terms of the Act. The Act, however, carves out some exceptions, including the release of personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the right to privacy. In such cases a discretion has been conferred on the concerned Public Information Officer to make available the information, if satisfied, that the larger public interest justifies the disclosure. This discretion must be exercised, bearing in mind the facts of each case and the larger public interest. Normally records of a person sentenced or convicted or remanded to police or judicial custody, if during that period such person is admitted in hospital and nursing home, should be made available to the person asking the information provided such hospital nursing home is maintained by the State or Public Authority or any other Public Body. It is only in rare and in exceptional cases and for good and valid reasons recorded in writing can the information may be denied.

. In those cases where the information sought cannot be denied to either Parliament or State Legislature, as the case may be, then the information cannot be denied unless the third person satisfies the authority that Parliament/Legislature, is not entitled to the information. There is no discretion in such cases to be exercised by the concerned Information Officer. The information has to be either granted or rejected, as the case may be. Every

public authority, whose expenditure is met partly or wholly from the funds voted by the Parliament/Legislature or Government funds are availed off is accountable to Parliament/Legislature, as they have interest to know that the funds are spent for the object for which they are released and the employees confirm to the Rules. The conduct of the employees of such an organisation subject to their statutory rights can also be gone into. If patients are to be admitted in hospital for treatment then those employees in the hospital are duty bound to admit only those who are eligible for admission and medical treatment. The records of such institution, therefore,, ought to be available to Parliament or the State Legislature. The Parliament/Legislature and/or its Committees are entitled to the records even if they be confidential or personal records of a patient. Once a patient admits himself to a hospital the records must be available to Parliament/Legislature, provided there is no legal bar. We find no legal bar, except the provisions of the Regulations framed under the Indian Medical Council Act. Those provisions, however, would be inconsistent with the proviso to Section 8(1)(j) of the Right to Information Act. The Right to Information Act would, therefore, prevail over the said Regulations.

18. Having said so, we are left with the other contention urged on behalf of the petitioner, that considering Section 19(4) of the Act which we have earlier reproduced the information could not have been given without giving a reasonable opportunity of being heard to the third party, in

the instant case the petitioner. We may note the scheme of the Act. In so far as the Public Information Officer is concerned before giving any information an opportunity has to be given to the third party as can be seen from Section 11 of the Act. We then have Section 19(2) which provides for an Appeal against an order by a person aggrieved to disclose third party information. The right of Appeal is also conferred under Section 19(4). In such cases the Section requires that the third party should be given a reasonable opportunity. It, therefore, appears that before any order is passed a third party has to be given notice in order that he may be heard. The question is whether this provision is purely procedural and failure to give notice would not render the decision illegal. Learned Counsel relies on the judgment in the case of **State Bank of Patiala and Ors. vs. S.K. Sharma, AIR 1996 SC 1669**. The issue there pertained to a Departmental enquiry and the right to be heard or given an opportunity. While dealing with the issue the Court noted, adverting to the principles of natural justice, that there cannot be any hard and fast formula. If failure amounts to violation of a procedure the Court observed and prejudice has been occasioned, the same has to be repaired and remedied by setting aside the enquiry, if no prejudice is established no interference is called for. The Court then observed as under:-

> "In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself

> proof of prejudice. The Court may not insist on proof of prejudice in such cases....."

The Section itself contemplates, that before giving information the third party has to be given an opportunity. It will, therefore, be difficult to accept the contention that this is merely a procedural requirement and that the party would not be prejudiced. As we have noted, normally the information sought about medical records of a convict and the like must be made available, yet it is possible that in a given case, a party may give sufficient reasons as to why the information should not be revealed. In the instant case considering that the petitioner was convicted for contempt and was sent to jail and thereafter spent larger part of his prison term in hospital the right of a public to be informed would normally outweigh the right of the petitioner to hold on to his medical records. But as noted by the Courts the right of hearing is not an empty formality. If the petitioner did not get a hearing before the Appellate Authority, it cannot be argued that the same can be cured by the petitioner getting an opportunity before this Court. A long term ago Meggarry J., in National Union of Vehicle Builders (1971) 1 Ch.34 observed as under:-

> "If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the

> rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless, have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

This proposition was approved by the Apex Court in Institute of Chartered Accountants of India v.. L.K. Ratna, AIR 1987 SC 72. In some cases in exercise of extra ordinary jurisdiction, the Court perhaps in order to avoid multiplicity of proceedings and the delay occasioned might without remanding the matter decide the matter provided all the material is on record. On the facts here petitioner had no opportunity of giving his say before the Appellate

Authority. Hence we are not inclined to adopt that course on the facts of the case. Even otherwise the requirement of notice is not an empty formality. It gives an opportunity to the third party to put its point of view why the information should not be disclosed and be heard on the point. Admittedly in this case no notice was given to the petitioner by Respondent No.2.

. In the light of that in our opinion for the failure by the respondent No.2 to give an opportunity to the petitioner the impugned order will have to be set aside and the matter remanded back to Respondent No.2 to give an opportunity to the petitioner and thereafter dispose of the matter according to law. Considering the public element and interest involved we direct the respondent No.2 to dispose of the matter on remand within 30 days from today.

. Rule to that extent made partly absolute. In the circumstances of the case there shall be no order as to costs.

(**F.I.REBELLO**, J)

(**R.M.SAVANT,J**.)